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**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA**  
**AND THE NORTHERN DISTRICT OF CALIFORNIA**  
**UNITED STATES DISTRICT COURT COMPOSED OF THREE JUDGES**  
**PURSUANT TO SECTION 2284, TITLE 28 UNITED STATES CODE**

15 RALPH COLEMAN, et. al., 16 Plaintiffs, 17 v. 18 EDMUND G. BROWN JR., et al., 19 Defendants.	CASE NO. 2:90-cv-00520 KJM DAD P <b><u>THREE-JUDGE COURT</u></b>
20 MARCIANO PLATA, et al., 21 Plaintiffs, 22 v. 23 EDMUND G. BROWN JR., et al., 24 Defendants.	CASE NO. C01-1351 TEH <b><u>THREE-JUDGE COURT</u></b> <b>DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR FURTHER ENFORCEMENT ORDER</b>

1                   **I. INTRODUCTION**

2                   As the most recent status and benchmark report shows, the State is 2,000 inmates  
3 *below* the 143% design bed capacity benchmark and has met the February 2015  
4 benchmark as well. All of the court-ordered population reduction measures are well  
5 underway: Defendants are drafting regulations and updating their information-technology  
6 systems to accommodate the new parole process for non-violent second-strike offenders;  
7 they have already scheduled hearings and granted parole to medically incapacitated and  
8 elder parole inmates; eligible non-violent second-strike inmates are receiving enhanced  
9 credits; all thirteen reentry hubs are now activated; and a new facility for the expanded  
10 alternative custody program has been activated. Plaintiffs' attempt to micromanage the  
11 ongoing implementation of these measures is unnecessary and counterproductive.

12                   **II. ARGUMENT**

13                   **A. Implementation of New Parole Procedures Is Well Underway.**

14                   Plaintiffs' contention that Defendants have not finalized or implemented parole  
15 processes for non-violent second strike offenders or persons eligible for elder parole is  
16 mistaken. (Pls.' Mot. to Enforce at 3:12-15.)

17                   Since June 20, 2014, the Board of Parole Hearings (BPH) has granted parole to  
18 63 inmates over age 60 and who have served at least 25 years. (Decl. J. Shaffer Supp.  
19 Defs.' Opp'n (Decl. Shaffer), ¶ 7.) On October 1, 2014, BPH will begin utilizing a revised  
20 risk assessment in all suitability hearings to determine how advanced age, long-term  
21 confinement, and diminished physical condition may impact the inmate's potential risk for  
22 future violence. (Decl. Shaffer, ¶ 7 & Decl. Shaffer, Sept. 15, 2014 Status Update, Ex. B at ¶ 8,  
23 *Plata D.E. 2811-2.*) BPH is upgrading its information technology system to accommodate  
24 this parole measure and has already trained its commissioners. (Decl. Shaffer, ¶¶ 5 & 6.)

25                   Defendants are also creating an entirely new parole process for non-violent  
26 second-strike offenders. Implementing this measure has required developing eligibility  
27 criteria, the process for reviewing cases, creating staff roles, and integrating this new  
28 measure into existing information technology systems. (Decl. R. Meier Supp. Defs.'

1 Opp'n (Decl. Meier), ¶ 2.) The May 2014 Revision to the Governor's Budget allocated  
2 additional funding to support these efforts. (*Id.* ¶ 4.) Defendants are developing an  
3 implementation process that includes, but is not dependent upon, the regulatory process.  
4 (*Id.* ¶ 3.)

5 Defendants are in full compliance with the Court's order. They immediately began  
6 work on creating and implementing this new parole measure and have made substantial  
7 progress. Requiring immediate implementation of the new parole process for non-violent  
8 second strike inmates, with truncated review process, would result in a haphazard policy  
9 that could endanger the public and not serve the goals of developing "comprehensive  
10 and sustainable prison population-reduction reforms." (*Plata* D.E. 2766 at 1.)

11 **B. Minimum Custody Inmates Cannot Earn Enhanced Credits Without  
12 Detrimentally Impacting The Fire Camp Population**

13 Plaintiffs baldly assert—without *any* supporting evidence—that granting 2-for-1  
14 credits to minimum custody inmates who are ineligible for fire camps "would have *no*  
15 impact on participation in fire camps." (Pls.' Mot. at 2:12-13, emphasis in original.)<sup>1</sup>  
16 Plaintiffs' argument is based on a mistaken and simplistic understanding of how the  
17 correctional system operates.

18 Fire camp placement has become increasingly difficult as the number of potentially  
19 eligible inmates has been diminished by realignment. (Decl. Vimal Singh Supp. Defs.'  
20 Opp'n (Decl. Singh), ¶ 2; see also Decl. Wolff, Ex. B.) Strict criteria limiting fire camp  
21 eligibility to low-level, non-violent offenders are necessary because fire camp participants  
22 are housed in non-secure facilities and are in contact with members of the public in their  
23 role as firefighters. (Decl. Singh, ¶ 2.) To incentivize participation in this voluntary  
24 program, CDCR offers 2-for-1 credits. (*Id.* ¶ 4.) Notwithstanding this incentive, there is a

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26 <sup>1</sup> Plaintiffs made no meaningful effort to meet and confer prior to the filing. The parties  
27 exchanged one letter apiece on this issue, and Defendants' letter explained in detail why  
the expansion of credits was not feasible. (Decl. S. Wolff Supp. Defs.' Opp'n to Pls.' Mot.  
to Enforce (Decl. Wolff), ¶¶ 2, 3 & Exs. A, B.)  
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1 constant need for volunteers. (*Id.*)

2 Extending 2-for-1 credits to all minimum custody inmates at this time would  
3 severely impact fire camp participation—a dangerous outcome while California is in the  
4 middle of a difficult fire season and severe drought.

5 CDCR offers minimum custody inmates the opportunity to be placed in a minimum  
6 support facility (MSF) where they perform a variety of critical job duties outside a prison's  
7 secure perimeter, including assignments necessary for the continued operation of the  
8 institution and essential to local communities.<sup>2</sup> (Decl. Singh, ¶ 5.) Like fire camps,  
9 minimum support facilities draw from the same limited population of low-level, non-violent  
10 offenders. (*Id.*) The extension of 2-for-1 credits to all MSF inmates would likely make fire  
11 camp beds even more difficult to fill, as low-level, non-violent inmates would choose to  
12 participate in the MSF program rather than endure strenuous physical activities and risk  
13 injury in fire camps. (*Id.* ¶ 6.)

14 Even the extension of 2-for-1 credits solely to MSF inmates who are fire camp  
15 ineligible would impact fire camps. Nearly two-thirds of the MSF population is fire camp  
16 ineligible; the extension of enhanced credit-earning to these inmates would result in  
17 higher turnover and an even greater demand for minimum custody inmates. (*Id.* ¶ 7.)  
18 CDCR would be forced to draw down its fire camp population to fill these vital MSF  
19 positions. (*Id.*) It is simply unnecessary, and inconsistent with the Court's order, to  
20 disrupt participation in fire camps and other vital programs when the Court's benchmark  
21 has been met.

22 **C. Defendants Have Exercised Their Discretion To Exclude Sex Offenders From  
23 Those Eligible For Credit Increases**

24 This Court has consistently indicated its desire to create a flexible framework  
25 within which Defendants may fashion reform measures designed to reduce the prison

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26  
27 <sup>2</sup> Such job assignments include garage, recycle and refuse collections, Plant Operations  
28 positions in support of institutional tradespersons, Caltrans, and city park crews. (*Id.* ¶ 5.)

1 population. (See, e.g., June 20, 2013 Order, *Plata* D.E. 2659 at 2:26: “[t]his Court  
2 desires to continue to afford a reasonable measure of flexibility”; *Brown v. Plata*, 131  
3 S.Ct. 1910, 1940 (2011): “The order of the three-judge court gives the State substantial  
4 flexibility to determine who should be released.”.) Within that framework, Defendants  
5 implemented increased credits for non-violent second-strike offenders and excluded sex  
6 offenders from this program in order to minimize the risks to public safety. Defendants  
7 have always indicated that this population measure would exclude sex offenders.

8 As early as May 2, 2013, Defendants stated that a reform that increased the  
9 credit-earning capacity of second-strike offenders would exclude sex offenders. (*Plata*  
10 D.E. 2609 at 37:1-3: “Defendants estimate that the prison population could be reduced by  
11 approximately 37 inmates by December 31, 2013 if the credit-earning capacity of inmates  
12 convicted of “second-strike” felonies (*excluding sex offenders*) is expanded from 20% to  
13 34%.” (emphasis added).)

14 Defendants’ seven monthly status updates to this Three-Judge Court since March  
15 of this year have all stated that sex offenders are excluded from increased credit earning  
16 programs for non-violent offenders. (Ex. B, *Plata* D.E. 2775-2; Ex. B, *Plata* D.E. 2780-2;  
17 Ex. B, *Plata* D.E. 2789-2; Ex. B, *Plata* D.E. 2792-2; Ex. B, *Plata* D.E. 2800-2; Ex. B, *Plata*  
18 D.E. 2809-2; Ex. B, *Plata* D.E. 2811-2.) Despite sex offenders’ ineligibility for enhanced  
19 credit earning, Defendants nonetheless met and exceeded the most recent benchmark  
20 by 2,000 inmates. (Defs.’ September 2014 Status Report, *Plata* D.E. 2811 at 2:6-7.)  
21 Defendants should be afforded the discretion to determine how to implement these  
22 measures in a manner consistent with the Court’s benchmarks and public safety.

### 23 III. CONCLUSION

24 Defendants have made significant strides in implementing population-reduction  
25 reforms. The additional reforms Plaintiffs demand be implemented—extension of  
26 enhanced credits to sex offenders and MSF inmates—are ill-advised and unnecessary  
27 given the current status of the prison population. Accordingly, Defendants respectfully  
28 request that this Three-Judge Court deny Plaintiffs’ motion.

1 Dated: September 30, 2014

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